May 1, 2009

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: CG Docket No. 03-123 – Three-Year VRS Rate Plan

Dear Ms. Dortch:

On April 30, the undersigned representatives of video relay service ("VRS") providers met separately with Scott Deutchman, legal advisor to Acting Chairman Copps; Mark Stone, legal advisor to Commissioner Adelstein; Nick Alexander, legal advisor to Commissioner McDowell; and Cathy Seidel, Tom Chandler, and Diane Mason of the Consumer and Governmental Affairs Bureau, as well as Sharon Diskin of the Office of General Counsel, to express their deep concern about reports that the Commission has circulated a proposal to abandon the three-year VRS rate methodology that has been in place for only 14 months. Releasing such a proposal would have dire consequences for members of the deaf and hard-of-hearing community, as explained below.

In the Americans with Disabilities Act ("ADA"), Congress directed the Commission to ensure that all deaf Americans have access to "functionally equivalent" TRS, "to the extent possible and in the most efficient manner."[1] As the only form of relay that allows deaf people to communicate in American Sign Language ("ASL"), VRS "provides a degree of 'functional equivalency' that is not attainable with text-based TRS."[2] Although VRS has been provided since 2002, many ASL users have yet to gain access to VRS or are not aware of its potential to revolutionize their lives by allowing them to communicate with hearing people with a rapidity and nuance that rivals that of hearing-to-hearing calls.[3]

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1 This requirement is codified at Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 225(a)(3), (b)(1) ("Section 225 of the Communications Act").

2 *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577, ¶ 5 (2005).

3 VRS is a broadband-enabled technology. As Acting Chairman Copps has stated, broadband "intersects with just about every great challenge confronting our nation, [including] . . . overcoming disabilities." Statement of Acting FCC Chairman Michael J. Copps, U.S. House of Representatives Committee on Appropriations, Subcommittee on

For many years, the annual ratemaking process for VRS was plagued by uncertainty concerning the forthcoming year's rate, as well as by arbitrariness and a lack of transparency. In addition, the Commission's annual changes to the rate-setting methodology did a poor job of advancing the statutory goals of functional equivalency, universal access, and efficiency, and imposed severe administrative burdens on providers and the FCC alike. After a 16-month rulemaking, the FCC voted unanimously for a three-year "tiered" VRS rate plan.[4] The new approach, released in November 2007, was patterned after prior FCC price cap plans and was designed to avoid the pitfalls of the prior approach that required annual, capricious changes to the VRS compensation rate.

A critical aspect of the new methodology was its assurance of a multi-year rate plan that is stable, fair, and predictable, allowing VRS providers to plan and make investments without the annual uncertainty, turmoil, and procedural infirmities that had plagued prior rate-setting efforts.[5] The FCC pledged that "[a]t the *end* of the three-year period, we will reassess what the tiers and rates shall be for the ensuing three-year period."[6] It committed that a stable and predictable rate plan would remain in place for the entire multi-year rate period, supporting providers' "planning and budgeting purposes," and "avoid[ing] having

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Financial Services and General Government, The FCC's Fiscal Year 2010 Budget Request, at 7 (April 29, 2009), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290479A1.pdf>.

4 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140 (2007), as corrected by Erratum, DA 07-5089, 22 FCC Rcd 21842 (2007) ("November 2007 Order").

5 *See* November 2007 Order ¶ 2 (VRS compensation rates "shall be effective for the 2007-2008 through 2009-2010 Fund years"); ¶ 11 (the FCC was "particularly interested in adopting a methodology that would result in more predictability for the providers"); ¶ 47 ("These rates will be set for a three-year period"); ¶ 51 ("Commenters argue that stable pricing will give providers the opportunity to budget their costs more effectively, and provide enough stability to make long-term investments and allocate money to programs that will reduce costs in the future."); ¶ 56 ("Commenters assert that a multi-year rate provides consistency that is necessary for planning and budgeting purposes, and avoids having to possibly adjust on short notice to a lower rate. We agree, and therefore conclude that the VRS tiers and rates will be adopted for a three-year period."); ¶ 67 ("These tiers and rates shall apply through the 2009-2010 Fund year"); ¶ 72 ("At the end of the three-year period, we will reassess what the tiers and rates shall be for the ensuing three-year period."); ¶ 97 ("The VRS . . . rates shall be set for three years, subject to certain annual adjustments.").

6 *Id.* ¶ 72 (emphasis added).

to possibly adjust on short notice to a lower rate."[7] Providers invested large sums in reliance on these promises and the settled expectation that a stable, predictable rate plan would remain in place for at least three years.

Despite the reliance of the VRS industry on a three-year plan, we now understand that the FCC has circulated a draft Notice of Proposed Rulemaking that proposes to change VRS rates for the forthcoming rate year, which will commence on July 1, 2009. Since the new methodology took effect on March 1, 2008,[8] the Commission would be reneging on its unequivocal commitment to a stable three-year rate plan after little more than 14 months.

The three-year rate methodology adopted unanimously by the Commission is a success story. New technology, equipment, services, and features are available to a growing number of deaf people. As a result, VRS service is improving with shorter hold times and better interpreting. These improvements have come about because deaf consumers are demanding functionally equivalent VRS, and VRS providers are investing in reliance on the FCC's commitment to a stable, three-year rate. To take just one example, Snap!VRS has invested millions of dollars in purchasing and distributing a new videophone (the Ojo) and in building an independent network to host the Ojos. Snap!VRS would have found itself hard-pressed or unable to commit to this significant capital investment had it not believed that it could rely on a stable, three-year rate plan established by the Commission.

By breaching its commitment to a three-year rate schedule, the FCC would be undercutting progress towards functional equivalence. The three-year rate plan was a critical milestone in the Commission's efforts to improve VRS. Any revision of VRS rates after only 14 months would fatally undermine confidence that the Commission remains committed to functional equivalence, virtually guaranteeing that further investment in improving VRS will diminish or disappear altogether.

Instead of releasing a deeply flawed proposal, the undersigned providers urge the Commission to initiate a fair and transparent process in which all stakeholders, providers, deaf consumers, and others discuss and decide what to do after this three-year rate cycle. Proposing to abandon the three-year plan after only 14 months will undermine the FCC's

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7 *Id.* ¶ 56.

8 *See* November 2007 Order ¶¶ 2 & n.10, 111 (the VRS rates adopted pursuant to the new cost recovery methodologies in the November 2007 Order were effective beginning on the first day of the month following the effective date of the November 2007 Order; the effective date of the November 2007 Order with respect to the rates was 30 days after publication in the Federal Register); 73 Fed. Reg. 3197, ¶ 17 (Jan. 17, 2008) (publishing November 2007 Order and specifying March 1, 2008, as the effective date for the new tiered rates for VRS).

credibility. The Commission should terminate this extremely divisive and disruptive proposal before it does serious harm to the FCC's successful VRS program.

Sincerely,

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